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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES--GENERAL

Case No. 01-MDL-1394-GAF(RCx) Date: March 26, 2003
ALL RELATED CASES

Title: In Re Air Crash at Taipei, Taiwan on October 31, 2000

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DOCKET ENTRY

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HON. ROSALYN M. CHAPMAN, UNITED STATES MAGISTRATE JUDGE

Debra Taylor Deputy Clerk	None Court Reporter
ATTORNEYS PRESENT FOR PLAINTIFFS: Brian J. Panish Kevin R. Boyle	ATTORNEYS PRESENT FOR DEFENDANT: Rod D. Margo Scott D. Cunningham Robert A. Philipson

PROCEEDINGS: PLAINTIFFS' MOTION FOR RULING ON ADDITIONAL DEPOSITIONS

On March 5, 2003, plaintiffs filed a notice of motion and motion for ruling on additional depositions, a joint stipulation with exhibits and the declaration of Donald J. Nolan, and lodged under seal for in camera review numerous exhibits in support of their motion. On the same date, defendant Singapore Airlines Ltd. ("SIA") filed the opposing declaration of Scott D. Cunningham with exhibits. On March 10, 2003, plaintiffs filed an application to file a work-product and protective order submission under seal, and on March 12, 2003, SIA filed objections to plaintiffs' request to submit documents under seal. This Court granted plaintiffs' request. On March 11, 2003, plaintiffs filed their supplemental brief and the supplemental declaration of Donald J. Nolan and supporting exhibits.

Oral argument was held on March 26, 2003, before Magistrate Judge Rosalyn M. Chapman. Brian J. Panish and Kevin R. Boyle, attorneys-at-law, appeared on behalf of plaintiffs, Rod D. Margo and Scott D. Cunningham, attorneys-at-law, appeared on behalf of defendant SIA, and Robert A. Philipson, attorney-at-law, appeared on behalf of defendant EVA.

DISCUSSION

I

The joint stipulation of the parties establishes that, to date, plaintiffs have conducted ten depositions, including a Rule 30(b)(6) deposition focusing on "[a]ny investigation by Singapore Airlines, Ltd., regarding these matters." Joint Stip. at 5:8-23. Defendant SIA designated Captain Alex DeSilva and Philip Cheah as its representatives for the Rule 30(b)(6) deposition. Joint Stip. at 5, n.1.

By this motion, plaintiffs seek to take the following eight additional depositions:

1. A Rule 30(b)(6) deposition focusing upon "what transpired inside the cockpit of [SIA flight] SQ006 on October 31, 2000, including what the crew saw, did and said from briefing to evacuation of the aircraft post crash";

2. Leong Kwok Hong -- SIA Flight Safety Manager and member of the Survival and Records Group that examined the cockpit voice recording;

3. Tan Kuelem -- In charge of SIA's Crisis Management Center;

4. Foo Kim Boon -- SIA's Vice-President for Corporate Affairs and Company Secretary, and person who gathered documents provided to plaintiffs pursuant to document requests;

5. Raymund Ng -- SIA's Senior Vice-President of Flight Operations;

6. General Bey Soo Khiang -- SIA's Executive Vice-President (Technical) and member of the Board of Directors and Executive Management Head Office;

7. Huang Cheng Eng -- SIA's Executive Vice-President (Marketing and Regions) and member of Executive Management Head Office; and

8. Captain Alex DeSilva -- SIA's Director of Safety and Security.

Generally, SIA opposes plaintiffs' request to take more than ten depositions, citing the limitation in Rule 30(a)(2)(A). More specifically, SIA objects to the proposed deposition of Foo Kim Boon on the ground he is corporate counsel for SIA and much of his information is privileged or protected as work-product, to the proposed deposition of Captain Alex DeSilva on the ground he has already been deposed in a Rule 30(b)(6) deposition at which he was produced as the person most knowledgeable, and to the proposed Rule 30(b)(6) deposition on the ground there is no particularized need for the deposition.

II

Rule 30(a)(2)(A) provides for a presumptive limitation of ten depositions per side, requiring that "[a] party must obtain leave of court, which shall be granted to the extent consistent with the principles stated in Rule 26(b)(2), if . . . , without the written stipulation of the parties[,] . . . a proposed deposition would result in more than ten depositions being taken under this rule or Rule 31 by the plaintiffs, or by the defendants, or by third-party defendants[.]" Fed. R. Civ. P. 30(a)(2)(A). As a preliminary matter, it is not at all clear that the limitation set forth in Rule 30(a)(2)(A) applies to multi-district litigation, which, by its definition, involves hundreds of cases and parties. Generally, litigation of such nature and scope requires substantial discovery, including the taking of more than ten depositions.

Assuming arguendo that the limitation in Rule 30(a)(2)(A) applies here, the Court must consider the principles set forth in Rule 26(b)(2), which provides:

> By order, the court may alter the limits in these rules on the number of depositions . . . or the length of depositions under Rule 30. . . . The frequency or extent of use of the discovery methods permitted under these rules . . . shall be limited by the court if it determines that: (i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs

> of the case, the amount in controversy, the parties' resources, the importance of issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues. . . .

Fed. R. Civ. P. 26(b)(2).

"Rule 30(a)(2)(A) is intended to control discovery, with its attendant costs and potential for delay, by establishing a default limit on the number of depositions." Barrow v. Greenville Independent School District, 202 F.R.D. 480, 483 (N.D. Tex. 2001). The Advisory Committee Notes to the 1993 Amendments to Rule 30(a)(2)(A) also emphasis these purposes:

> One aim of this revision is to assure judicial review under the standards stated in Rule 26(b)(2) before any side will be allowed to take more than ten depositions in a case without agreement of the other parties. A second objective is to emphasize that counsel have a professional obligation to develop a mutual cost-effective plan for discovery in the case. Leave to take additional depositions should be granted when consistent with the principles of Rule 26(b)(2), and in some cases the ten-per-side limit should be reduced in accordance with those same principles.

Likewise, the Advisory Committee Notes to the 1993 Amendments to Rule 26(b) explain:

> Textual changes . . . made in new paragraph [26(b)](2) . . . enable the court to keep tighter rein on the extent of discovery. The information explosion of recent decades has greatly increased both the potential cost of wide-ranging discovery and the potential for discovery to be used as an instrument for delay or oppression. Amendments to Rules 30, 31, and 33 place presumptive limits on the number of depositions and interrogatories, subject to leave of court to pursue additional discovery. The revisions in Rule 26(b)(2) are intended to provide the court with broader discretion to impose additional restrictions on the scope and extent of discovery. . . . The revision also dispels any doubt as to the power of the court to impose limitations on the length of depositions under Rule 30. . . .

"In practical terms, a party seeking leave to take more depositions . . . than are contemplated by the Federal Rules . . . must make a particularized showing of why the discovery is necessary." Archer Daniels Midland Co. v. Aon Risk Services, Inc. of Minn., 187 F.R.D. 578, 586 (D. Minn. 1977); see also Bell v. Fowler, 99 F.3d 262, 271 (8th Cir. 1996) (District court did not abuse its discretion in denying plaintiff leave to take additional depositions when plaintiff, who was allowed to take 12 depositions, "presented no good reason why the additional depositions were necessary.").

This Court, having reviewed all documents, including the in camera lodgment by plaintiffs, and having considered the factors required by Rules 1, 26(b)(2) and 30(a)(2)(A), finds good cause to authorize the taking of the requested depositions, except for the deposition of Foo Kim Boon. Regarding Mr. Foo, and without determining whether he acts as SIA's corporate counsel, the Court finds plaintiffs have failed to make a particularized showing of the necessity of taking his deposition, merely arguing his deposition should be taken because he was the individual who collected the documents responsive to plaintiffs' requests and plaintiffs need to determine whether the productions were sufficient. That does not meet the standards of Rules 26(b)(2) and 30(a)(2)(A). However, the Court does find that plaintiffs have met their burden of making a particularized showing for the need to depose the other witnesses, including a Rule 30(b)(6) deposition focusing on the events that occurred inside the cockpit of SIA Flight SQ006 on October 31, 2000.[1] Quality Aero Tech. v. Telemetrie Elektronik, GMBH, 212 F.R.D. 313, 319 (E.D. N.C. 2002). In making this finding, the Court finds no merit to SIA's argument that Captain Alex DeSilva has already been examined and, thus, the proposed deposition is his second deposition. Depositions under Rule 30(b)(1) and Rule 30(b)(6) are two entirely different types of depositions. See United States v. J.M. Taylor, 166 F.R.D. 356, 361 (D.C. N.C. 1996) ("The Rule 30(b)(6) designee does not give his personal opinions. Rather, he presents the corporation's 'position' on the topic. Moreover, the designee must not only testify about facts within the corporation's knowledge, but also its subjective beliefs and opinions. The corporation must provide its interpretation of

[1] This deposition, of course, would not be necessary if SIA had produced Captain Foong, as ordered by the Court.

documents and events. The designee, in essence, represents the corporation just as an individual represents him or herself at a deposition. Were it otherwise, a corporation would be able to deceitfully select at trial the most convenient answer presented by a number of finger-pointing witnesses at the deposition. Truth would suffer." (citations omitted)). If a corporate party's designation of the person most knowledgeable under Rule 30(b)(6) would prevent the opposing party from examining that person as an individual, the corporate party could stymie the noticing party's ability to examine a key witness, thus defeating the purpose of allowing two types of depositions. Moreover, as plaintiffs argue, the transcript of the Rule 30(b)(6) deposition of Captain DeSilva shows that his examination was limited solely to the topic of the Rule 30(b)(6) notice. Certainly, Captain Alex DeSilva, as SIA's Director of Safety and Security, has percipient knowledge of many other subjects than the topic of the Rule 30(b)(6) deposition that are relevant to plaintiffs' claims and SIA's defenses. Finally, there is no doubt that the proposed topic of the new Rule 30(b)(6) deposition, i.e., events occurring inside the cockpit of SIA flight SQ006 on the day of the crash, is relevant -- and plaintiffs have been trying for more than a year to get this information. Thus, plaintiffs' motion is granted, in part, and denied, in part.

ORDER

Plaintiffs' motion to take eight additional depositions of Singapore Airlines, Ltd. is granted, in part, and denied, in part, as set forth above. Specifically, plaintiff may take the depositions of Leong Kwok Hong, Tan Kuelem, Raymond Ng, General Bey Soo Khiang, Huang Cheng Eng, Captain Alex DeSilva and a Rule 30(b)(6) deposition focusing upon "what transpired inside the cockpit of [SIA flight] SQ006 on October 31, 2000, including what the crew saw, did and said from briefing to evacuation of the aircraft post crash." Regarding the Rule 30(b)(6) deposition, defendant Singapore Airlines Ltd. shall designate to plaintiffs the person most knowledgeable no later than April 2, 2003, at 4:00 p.m. PST. The depositions of the Rule 30(b)(6) designee and the other deponents set forth in this Order shall be taken in Los Angeles, no later than April 25, 2003, unless the parties unanimously agree otherwise, at the offices of Condon & Forsyth, or, in the event those offices are not available, at the offices of Greene, Broillet, Panish & Wheeler.

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